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(by and through the California Highway
9 *Patrol) and Sergio Flores*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 JACOB GREGOIRE,

14 Plaintiff,

15 v.

16
17 CALIFORNIA HIGHWAY PATROL,
an agency of the State of California;
18 SERGIO FLORES, and DOES 1 to 20,

19 Defendants.

Case No.: 14-cv-01749-GPC (DHB)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' EX PARTE
APPLICATION TO ALLOW
TELEPHONIC APPEARANCE OF
CHP REPRESENTATIVE AT
MANDATORY SETTLEMENT
CONFERENCE**

Date: Ex Parte
Time: Ex Parte
Courtroom: Tenth Floor (Annex)
Judge: The Honorable David H.
Bartick

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23 **STATEMENT OF THE FACTS**

24 A Mandatory Settlement Conference is set in this action for 10:00 a.m., on
25 December 4, 2015, before the Honorable Judge David H. Bartick. This is a civil
26 rights action, in which Plaintiff Jacob Gregoire (a Chula Vista Fire Engineer)
27 contends that Defendant Sergio Flores (a California Highway Patrol Officer)
28 unlawfully arrested Plaintiff at the scene of a traffic accident on February 4, 2014.

1 As noted in the Declaration of Douglas E. Baxter, it came to the attention of
2 the Attorney General's Office this week that Kim Hunter, Chief Counsel of the
3 California Highway Patrol, is suffering from serious medical issues. Ms. Hunter
4 would normally be in attendance at a Mandatory Settlement Conference in this type
5 of action. However, on December 4, 2015, she will be undergoing medical
6 procedures that prevent her from traveling. Ms. Hunter's condition is extremely
7 serious, and she is presently unable to attend to her normal duties. As a result,
8 Carolyn Lloyd, Assistant Chief Counsel, is filling both her own job duties and the
9 role of Chief Counsel. Ms. Lloyd is charged not only with the day-to-day legal
10 affairs of the California Highway Patrol, but she is also responsible for monitoring
11 all of its current civil actions around the State.

12 Ms. Lloyd is heavily overtasked right now and for the indefinite future.
13 Because she is performing multiple roles at the highest level of the CHP Office of
14 Legal Affairs, it would be extremely burdensome for her to leave her post in
15 Sacramento to travel to San Diego on December 4, 2015. Because she is
16 responsible for the daily work that would normally be shared by the Chief Counsel,
17 the Assistant Chief Counsel, and other staff counsel (who have been assigned to
18 other duties outside the civil litigation arena), Ms. Lloyd needs to be available in
19 Sacramento for the multitude of issues that arise on a daily basis in the course of
20 CHP's statewide operations.

21 Acting as Chief Counsel, Ms. Lloyd is the person at CHP who will have the
22 authority to negotiate settlements. Deputy Attorney General Douglas E. Baxter is
23 the assigned litigation counsel with primary responsibility for handling the
24 Defendants' defense and who will be present in person at the mandatory settlement
25 conference.

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ARGUMENT

I. THE COURT HAS DISCRETION TO ALLOW CHP'S SETTLEMENT REPRESENTATIVE TO APPEAR TELEPHONICALLY AT THE MANDATORY SETTLEMENT CONFERENCE

Any settlement in this action would be paid by CHP, as the allegations involve acts and events occurring within the course and scope of Officer Flores' employment for CHP. As noted above, Ms. Lloyd is presently filling the role of Chief Counsel at CHP. The Chief Counsel is the person with negotiating authority at the CHP. Given the other roles and functions that Ms. Lloyd must also fulfill while Ms. Hunter attends to medical issues, Ms. Lloyd and the CHP would be extremely burdened if Ms. Lloyd must travel to San Diego for the mandatory settlement conference. Accordingly, Defendants respectfully request that Ms. Lloyd be given permission to attend the December 4, 2015, mandatory settlement conference by telephone.

The authority to allow telephonic appearance by a representative with negotiating authority was recognized in the case of *United States v. United States Dist. Court for Northern Mariana Islands (Northern Mariana Islands)*, 694 F.3d 1051, 1059-1061 (9th Cir. 2012). That case noted the unique problems government and institutional parties have in producing single individuals with final settlement authority at settlement conferences. The case quoted key observations from the Advisory Committee Notes for the 1993 amendments to Rule 16(c)(1) of the Federal Rules of Civil Procedure:

Particularly in litigation in which governmental agencies or large amounts of money are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility.

Northern Mariana Islands, 694 F.3d at 1060.

The Court also recognized that the Civil Justice Reform Act, 28 U.S.C. section 473(b)(5), expressly allows courts to permit settlement representatives to appear telephonically. *Northern Mariana Islands*, 694 F.3d at 1061.

Furthermore, just as federal courts have inherent authority to order the personal attendance of settlement representatives, *Northern Mariana Islands*, 694 F.3d at 1058, this same inherent authority must allow such courts the discretion to permit telephonic appearances.

Here, Ms. Lloyd can appear telephonically, and she has the responsibility for negotiating settlement offers. In addition, Deputy Attorney General Douglas E. Baxter will be attending the mandatory settlement conference in person.

CONCLUSION

Based on the foregoing, Defendants respectfully ask permission for Ms. Lloyd to appear telephonically at the December 4, 2015, Mandatory Settlement Conference. A proposed order for this request is being emailed to the Court's Chambers.

Dated: November 20, 2015

Respectfully submitted,

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